

§ 241.865

24 CFR Ch. II (4-1-14 Edition)

§ 241.865 Election by the lender.

Where a real estate mortgage, or other security instrument has been used to secure the payment of a loan made under the provisions of this subpart and subpart C of this part, the lender may either elect to assign the loan to the Commissioner in exchange for the payment of insurance benefits or may exercise its rights under the note and security instrument in lieu of making a claim for insurance benefits. If the lender elects the latter course, the Commissioner shall be so notified and the contract of insurance shall be deemed terminated upon the date of receipt of such notification.

§ 241.875 Maximum claim period.

Notice of intention to file claim on a form prescribed by the Commissioner shall be filed within 45 days after the lender becomes eligible for the benefits of the loan insurance, or within such later time as may be agreed upon by the Commissioner in writing.

§ 241.880 Items to be delivered on submitting claim.

Within 30 days after the filing of the notice of intention to assign the loan to the Commissioner, or within such further period as may be agreed upon by the Commissioner in writing, the lender shall deliver to the Commissioner:

- (a) The fiscal data pertaining to the loan transactions;
- (b) Receipts covering all disbursements as required by the fiscal data form;
- (c) The original note and any security instrument or instruments which shall be assigned to the Commissioner without recourse or warranty, except that the lender must warrant that no act or omission of the lender has impaired the validity and priority of such security instrument or instruments that the security instrument or instruments are prior to all mechanics' and materialmen's liens filed of record subsequent to the recording of such security instrument or instruments regardless of whether such liens attached prior to such recording date, and prior to all liens and encumbrances which may have attached or defects which may have arisen subsequent to the re-

ording of such security instrument or instruments, except such liens or other matters as may be approved by the Commissioner, that the amount stated in the instrument of assignment is actually due and owing under the security instrument or instruments, that there are no offsets or counterclaims thereto, and that the lender has a good right to assign such note and security instrument or instruments;

(d) The assignment to the Commissioner of all rights and interests arising under the note and security instrument or instruments so in default and all claims of the lender against the borrower or others arising out of the loan transaction;

(e) All policies of title or other insurance or surety bonds, or other guarantees and any and all claims thereunder; including evidence satisfactory to the Commissioner that the original title coverage has been extended to include the assignment of the note and security instrument or instruments to the Commissioner;

(f) All records, ledger cards, documents, books, papers and accounts relating to the loan transaction;

(g) Any additional information or data which the Commissioner may require;

(h) The following cash items, held in connection with the loan insured under this subpart, shall either be retained by the lender or delivered to the Commissioner at the time the insurance claim is filed.

(1) Any cash held by the lender or its agents or to which it is entitled including deposits made for the account of the borrower and which have not been applied in reduction of the principal the loan indebtedness.

(2) All funds held by the lender for the account of the borrower received pursuant to any other agreement.

(i) On the date the assignment of the note and security instrument or instruments are filed for record, the lender shall notify the Commissioner and the Office of Finance and Accounting by telegram of such recordation.

§ 241.885 Insurance benefits.

(a) *Method of payment.* Payment of claims shall be made in the following manner:

(1) *Payment in cash.* Unless a written request for payment in debentures is filed with the application, payment shall be made in cash.

(2) *Optional payment in debentures.* Payment shall be made in debentures upon the filing of a written request for same with the application.

(b) *Amount of payment.* Upon acceptable assignment of the note and security instrument to the Commissioner, the insurance benefits shall be paid in an amount equal to 90 percent of the amount determined as follows:

(1) By adding to the unpaid principal amount of the loan, computed as of the date of default, the following items:

(i) Any accrued interest due as of the date of execution of the assignment of the loan to the Commissioner.

(ii) Any advances approved by the Commissioner made previously by the lender under the provisions of the note or security instrument or instruments.

(iii) Reimbursements for such reasonable collection costs, court costs, and attorney's fees as may be approved by the Commissioner.

(iv) Any loan insurance premiums paid after default.

(v) If payment is made in cash, an amount equivalent to the debenture interest thereon, as of the date such cash payment is made, except when the lender fails to meet any one of the applicable requirements of §§241.850, 241.875, and 241.880, within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(2) By deducting from the total of the items computed under paragraph (b)(1) of this section the following items:

(i) Any amount received by the lender on account of the loan after the date of default.

(ii) Any net income received by the lender from the property covered by the note or security instrument and not applied to prior debts held by the lender.

(iii) The sum of the cash items retained by the lender pursuant to §241.880(h) (1) and (2).

§ 241.890 Characteristics of debentures.

Debentures issued in settlement of insurance claims under this subpart shall have the same characteristics and the same requirements for registration and redemption as those issued pursuant to subpart B of this part except that debentures shall bear interest at the rate in effect as of the date the commitment was issued, or as of the date the loan was first endorsed for insurance, whichever rate is higher, and shall mature 10 years from the date of issue which date shall be the date of execution of the assignment of the loan to the Commissioner.

§ 241.893 Cash adjustment.

Any difference of less than \$50 between the amount of debentures to be issued to the lender and the total amount of the lender's claim, as approved by the Commissioner, may be adjusted by the issuance of a check in payment thereof.

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ASSIGNMENTS

§ 241.895 Assignment of insured loans.

(a) An insured loan may be transferred only to a transferee who is a lender approved by the Commissioner. Upon such transfer and the assumption by the transferee of all obligations under the contract of insurance the transferor shall be released from its obligations under the contract of insurance.

(b) The contract of insurance shall terminate with respect to loans described in paragraph (a) of this section upon the happening of either of the following events:

(1) The transfer or pledge of the insured loan to any person, firm or corporation, public or private, other than an approved lender.

(2) The disposal by a lender of any partial interest in the insured loan to other than an approved lender.